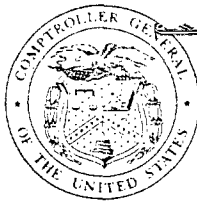


**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

9077

FILE: B-193870

DATE: February 9, 1979

MATTER OF: H. Oliver Welch & Company

**DIGEST:**

Protester's late proposal was properly rejected by agency notwithstanding mailing of proposal by U.S. Postal Service express mail, which allegedly guarantees timely delivery, in absence of showing that proposal was mishandled by agency making procurement after its receipt.

DLG 00829

H. Oliver Welch & Company (Welch) protests the rejection of its proposal by the Small Business Administration under request for proposals (RFP) No. SBA-7(i)-MA-79-1.

The basis of the rejection was that the proposal was received by SBA after the closing date for receipt of proposals. The date and time designated for receipt of proposals was established as 5:00 p.m. on December 15, 1978. On December 14, 1978, Welch's proposal was delivered to and sent by the U.S. Postal Service to SBA via express mail, which guaranteed delivery by 12:00 noon the next day. However, the proposal did not arrive until December 18, 1978, at 11:08 a.m. Welch does not dispute the fact that its proposal was late, but argues that "since the package was delivered to an agent of U.S. Government that guarantees delivery by noon the next day and fails to meet this guarantee," its proposal should not have been rejected as late.

Paragraph 8(a) of Standard Form 33A, "Late Proposals, Modifications of Proposals, and Withdrawals of Proposals," as amended, states in pertinent part:

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for

003560

*Cher*

receipt will not be considered unless it is received before award is made, and:

"(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

"(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

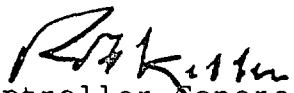
"(3) It is the only proposal received."

It is our view that Welch's proposal was properly rejected by the contracting officer. Welch's proposal should have been delivered prior to the deadline for receipt of proposals, but it was not received until after the date set for receipt of proposals. The fact that Welch's proposal was sent by express mail, or that delivery in that manner is guaranteed, did not relieve Welch of its obligation to assure timely arrival of its proposal. Our Office has consistently held that an offeror has the responsibility to assure timely arrival of its offer and must bear the responsibility for its late arrival. Late receipt of an offer will result in its rejection unless the specific conditions of the proposal are met. Robert Yarnell Richie Productions, B-192261, September 18, 1978,  
78-2 CPD 207.

Under the terms of the RFP, a late proposal may be considered only if sent by registered or certified mail in the manner outlined above or where "the late receipt was due solely to mishandling by the Government after receipt at the Government installation" at which the procurement is being made and, therefore, the Postal Service's failure to deliver the proposal

does not constitute mishandling at a Government installation. Kessel Kitchen Equipment Co., Inc., B-189447, October 5, 1977, 77-2 CPD 271.

Generally, our Office will request a report from the procuring agency upon receipt of a bid protest pursuant to our Bid Protest Procedures. However, where it is clear from a protester's submission that the protest is legally without merit, we will decide the matter on that basis. MEMCOM, B-191526, April 6, 1978, 78-1 CPD 276. Therefore, the protest is summarily denied.

  
Deputy Comptroller General  
of the United States